IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

CRL.A.No. 168 of 2000(A)

CC.12/1995 of ENQUIRY COMMR. & SPL. JUDGE, THRISSUR
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APPELLANT: ACCUSED

P.S.DEVI, FORMER CASHIER,
KAP IST BATTALION,
THRISSUR.

BY ADV. SRI.J.JOSE
SRI.S.R.MANOJ
SRI.K.A.SALIL NARAYANAN
SRI.SHAJI THOMAS PORKKATTIL

RESPONDENT: COMPLAINANT

STATE OF KERALA, REPRESENTED
BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.P.N.SUKUMARAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26/09/2007, THE COURT ON 08/10/2007 DELIVERED THE FOLLOWING:

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CRA. NO.168/2000

ORDER ON CMP. NO.1170/2000 IN CRA. NO.168/2000

DISMISSED

08.10.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S. TO JUDGE

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K.R. UDAYABHANU, J.

CRL.A.NO. 168 OF 2000

DATED THIS THE 8TH DAY OF OCTOBER 2007

JUDGMENT

The appellant is the first accused in C.C.No.12/1995 in the file of the Court of Enquiry Commissioner & Special Judge, Thrissur who stood trial for the offences under Section 5(1)(c) and (d) read with Section 5(2) of the Prevention of Corruption Act, 1947 and under Section 13(1)(c) and (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 and under Sections 403, 409 and 477 A read with Section 34 of the Indian Penal Code. The second accused is reported to be absconded. The first accused stands convicted and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.25,000/- and in default to undergo simple imprisonment for 1 ½ years for the offence under Sections 5(1)(c) read with Section 5(2) and 13(1)(c) and (d) read with Section 13(2) of the Prevention of Corruption Act (for short 'the Act') and to undergo rigorous imprisonment for three years for the offence under Sections 5(1)(d) read with Section 5(2) and 13(1)(d) r/w.13(2) of the Act and to undergo rigorous imprisonment for four years for the offence under Section 409 read with Section 34 I.P.C.; and also to undergo rigorous imprisonment for three years and to pay a fine of Rs.15,000/- and in

default to undergo simple imprisonment for one year for the offence under Section 477 A I.P.C. It was also ordered that the substantive sentences of imprisonment shall run concurrently.

2. The prosecution case is that the first accused, a lady working as Cashier of K.A.P. I Battalion, Thrissur and the second accused, the Treasury Orderly of the same Battalion during the period from 24-6-1988 to 15-12-1988 committed temporarily misappropriation of funds.

3. The evidence adduced in the matter consisted of the testimony of Pws.1 to 16 and Exts.P1 to P48 and Ext.D1. To be specific alleged misappropriation and the periods during which the same was committed are as follows:

1. Rs.3.456/- being the GPF amount due to DCE Coy during the period 21-11-88 and 5-12-88;

2. Rs.46393/- being the KPW and A fund between the period 12-8-88 and 7-12--88;

3. Rs.22380/- being the KPW and A fund between the period 24-6-88 to 24-9-88;

4. Rs.5348/- being the Sports Fund between the period 29-9-88 and 7-10-88;

5. Rs.62650/- being the KISHCO fund between the period 8-12-88 and 13-12-88;

6. Rs.8156/- being the KISHCO Fund between the period 8-12-88 and 14-12-88;

7. Rs.30/- on 8-12-88 and made false entries in the Cash book and Pass Book and failed to make the remittance of the amount at the proper time.

4. PW1 who conducted the preliminary enquiry as the then Assistant Commandant of KAP I Battalion, Thrissur has testified as to the details of the alleged misappropriation. PW2 is the official of the concerned Treasury who was the S.B.Account Passing Officer. PW3 who ordered PW1 to conduct the preliminary enquiry was the then Commandant, KAP I Battalion, Thrissur who initiated the action against both the accused and who suspended both the accused from service.

5. PW4 is the Treasury official who had officiated in the section of Treasury savings bank. PW5 was the then Deputy Manager of the Federal Bank Main Branch, Thrissur. PW6 is the another Treasury officer who handled the S.B.Section of the Treasury. For certain periods involved in the matter, PW7 was the Assistant Treasury officer. Pw8 was the officer Commandant in-charge of E Company of KAP

Battalion. PW9, the Junior Accountant at the treasury was given up by the prosecution. PW10 was the D.I.G. Armed Police Battalion, Thiruvananthapuram who sanctioned the prosecution. Pw11 is the official in the Administrative Wing of KAP I Battalion. PW12 had worked as Sub Inspector in KAP I Battalion. PW13 was the cashier in-charge who handed over the charge to A1. PW14 is the Dy.S.P. Vigilance and Anti Corruption Bureau (for short VACB) who registered the F.I.R. in the matter. PW15 is the Circle Inspector of VACB who conducted the investigation in part. PW16 is the Circle Inspector, VACB who submitted the factual report.

6. Of the seven items of the alleged misappropriation, except No.1 the rest are with respect to delayed remittance at the Treasury Bank account and in the Federal Bank. Certain of the transactions were treated as private funds and item No.1 as Government funds. Items 2 to 4 are with respect to KPW & A (Kerala Police Welfare and Aminities Fund) and the Sports Fund which are remitted in the Treasury Bank Account and items 5 to 7 are with respect to KISHCO, i.e. with respect to housing etc. which are remitted in the Federal Bank. Item No.1 is is with respect to G.P.F. Account. The allegation is that Rs. 3456/-, the G.P.F. loan amount to be transmitted to the

officer in charge of the E Company at Munnar was misappropriated for a period of 15 days, i.e. from 21-11-1988 to 5-12-1988. The evidence is that vide Ext.P5(a) a sum of R.8726/- was withdrawn and out of which Rs.3456/- to be transmitted to E Company was sent on 21-11-1988 vide money memo and the concerned expenditure voucher but the same was handed over to E Company only on 5-12-1988 and in the concerned voucher the date of handing over of the money to the second accused was found corrected as 5-12-1988. Ext.P8 is the cash book wherein the relevant entries are made, i.e. Exts.P8(a) to P8(c). The triplicate voucher was not affixed to the relevant receipt book. The above was the duty of the Cashier. It is defence contention that the correction was made by the second accused and not by the first accused. It is pointed out that PW1 has also admitted that the above correction might have been made by the second accused. All the same considering the fact that the first accused is the Cashier who is bound to see the remittances are made properly and the concerned receipts are collected and kept, it was found that she cannot be absolved of liability, although the period of misappropriation was only about 15 days.

7. So far as item No.2 is concerned the same consisted of the

misappropriation during the period from 12-8-1988 to 7-12-1988, i.e. about four months. The above item consisted of a total amount of Rs.46,393/- and the amount consisted of nine items, i.e.Rs.6000/-, 1800/-, 2217/- 9600/-, 1000/-, 6368/-, 2800/- 4948/- and Rs.11,660/-. It was found that vide Ext.P12(a), i.e. receipt voucher there was a receipt of Rs.6000/- on 12-8-1988 and the amount was shown as remitted in the Treasury Bank Account, but there was no pay-in-slip. It was found that the entry with respect to the remittance is noted in Savings Pass Book and the alleged remittance tallied with the treasury Savings Pass Book, but there was no remittance . The entries in the cash book is seen to have been made but the only document to show the remittance is the pass book. It is the version of the first accused that the pass book was produced by the second accused and she had verified the entries and that it was not the practice to insist for pay-in-slip or remittance slip and that she was misled by the second accused showing the entries in the pass book which was found to be fabricated. It was brought out that in the corresponding treasury records the remittance mentioned in the pass book was absent. The case of the first accused is that the second accused was adopting the above method and the cashier(A1) was thus

misled and that at best she can be charged only for the lapse or negligence and not for criminal misappropriation.

8. As mentioned above, Rs.6000/- was shown to have remitted in the treasury bank account on 12-8-1988 and the relevant entries were made in the cash book, but it was brought out in evidence that the above remittance was not made in the Treasury S.B. Account. The first accused is the custodian of the pass book as well. It is in similar fashion Rs.1800/- which is part of item No.2 is said to have been remitted in the S.B. Account on 9-9-1988 vide entry Ext.P12(b) in Ext.P12 cash book. It was found that the above amount was also not remitted in the Treasury Savings Bank account. So also Rs.1800/- as having remitted on 9-9-1988 and Rs.2217/- said to have been remitted on 4-10-1988 as per the relevant entry and voucher but there was no pay-in-slip and no remittance. So also Rs.9600/-is mentioned as remitted on 7-10-1988, but it was found that the amount was also not remitted. So also Rs.1000/- is mentioned as remitted on 7-10-1988 but there was no remittance in the Treasury. On 3-11-1988, Rs.6368/- is said to have been remitted vide Ext.P12 entry but the above amount was also not seen remitted. So also on 4-11-1988 Rs.2800/- is mentioned as remitted at the Treasury

Savings Bank account but there was no pay-in-slip. On 11-11-1988 Rs.4948/- is mentioned as remitted in Ext.P12 cash book but the same was not found to have been remitted. So also Rs.11,660/- mentioned as remitted on 7-12-1988 was not remitted. The above amounts are item No.2, altogether amounting to Rs.46,393/-.

9. Item No.3 also relates KPW & A fund and the total amount of Rs.22,380/- were allegedly misappropriated for 3 months, i.e. from 24-6--1988 to 24-9-1988 . The above total are the amounts in five instances i.e.Rs.475/-; Rs.8400/-; Rs.1841/-;Rs.1200/-; Rs.10464/-. The above delayed remittances are also made by making use of the same method, i.e. entries are seen in the pass book, but there was no pay-in-slips. Some of the amounts were remitted subsequently. Ext.P15 Treasury Pass Book and the records of the Treasury as proved by the witnesses showed that there was no corresponding remittance on the relevant dates. But subsequently the cheques drawn, i.e. for Rs.25,580/- and Rs.9750/- from the above account were encashed, but really there was no encashment from the treasury. It was found from the records that there was no sufficient amounts to draw the cheques at all. But entries in the pass book were fabricated and the amounts were given. According to the first accused, it was the

second accused who managed the same. Hence, a sum of Rs.35,330/-, i.e. total of the two cheques were shown as encashed and entered in the concerned records kept by the first accused. Cash balance in Ext.P12 cash book and Ext.P15 on the relevant date also did not tally.

10. Item No.4 is regarding the Sports Fund of the Battalion. It is recorded that on 29-9-1998, Rs.5675/- was received and remitted at the bank but the concerned voucher did not contain the treasury seal. So also Rs.48/- is stated to have been remitted on 7-10-1988. The above amounts were not seen remitted although in Ext.P18 the pass book there are entries of remittances which are fabricated. Ext.P17 is the cash book of the Sports Fund. It was found that there was a short remittance of Rs.5348/- vide Ext. P27(a) ledger of Treasury proved by Pw6.

11. Items 5,6 and 7 altogether amounted to Rs.70,836/- towards KISHCO fund. The amount was despatched for remittance on 8-12-1988 at Federal Bank. It is the delayed remittance of the above amount that triggered the investigation . According to A1, she submitted a note to PW3 with respect to the above amounts entrusted with A2 and that the remittance slips were not handed over

to her. On the other hand PW3 has testified that he received telephonic information form the Bank that there was no remittance and he asked for the details from A1 and then she submitted Ext.P4(a). The amounts that constitute Rs.70,836/- are Rs.62,650/-; Rs.8156/-; and Rs.30/-. Enquiry was initiated as per order of PW3 vide Ext.P4(b) order. Then Rs.62650/- was remitted on 13-12-1988 and Rs.8156/- on 14-12-1988 allegedly by the second accused. The delay is of 5 days and 6 days respectively. Rs.30/- was not remitted at all.

12. The duties of the cashier as per Ext.P1 circular encompass the entire monetary transactions. The cashier is the person directly responsible for keeping account of the above transactions. The contention that the official superior has not properly verified the accounts that she submitted before him is no excuse. The attempt is to cast the entire responsibility on a Treasury Orderly which cannot be accepted. Pw2, the Passing Officer of Savings Bank accounts at the District Treasury, Thrissur has denied the relevant entries in Ext.P15 pass book as the one initialled by her. PW4, the Treasury official in the treasury public account section has testified as to Ext.P26 ledger wherein the alleged remittance of Rs.6000/-, Rs.1800/-, Rs.2217/-, Rs.9600/-, Rs.1000/-, Rs.6368/-, Rs.2800/-,

Rs.4948/-, Rs.11,660/- are seen not entered. The pass book entries as to the above remittances were evidently not made in the Treasury. PW15, the Manager of the Federal Bank has proved Ext.P28 mail transfer register extract. PW6 the then Passing officer with the Treasury has denied the entries in Ext.P15 as having been initialled by him. He has also denied the entries as having initialled by him in Ext.P18 pass book. He has also testified that the remittances as having been made at the Treasury as per Ext.P18 pass book are not seen in Ext.P27, a ledger of the Treasury. PW8, the Officer Commandant in charge of E Company has proved the documents, i.e. Exts.P10(b) and Ext.P31 with respect to the receipt of Rs.3456/- on 5-12-1988 only. PW13, the cashier who handed over charge to the first accused has testified in proof of the documents produced and has also testified as to the handwriting and signature of the first accused in the documents produced. Of course, Ext.P39 opinion of the handwriting expert was not proved by examining the expert. But, I find that there is no dispute as to the genuineness of the handwriting of the entries in the relevant documents. Ext.P2 is the appointment order of the first accused as the cashier; and there is no dispute as to the fact that she was the cashier during the relevant period.

In the circumstances and in view of the counterveiling evidence, I find that the contention of the first accused that she was misled by the second accused, the Treasury Orderly, who is absconding cannot be upheld. It is not a solitary instance or a few instances where she has faulted. The above lapse cannot be attributed to innocent omissions. Of course, most of the amounts have been remitted and the charge is that the amounts were temporarily misappropriated . It cannot be held that there was only irregularities and no wilful attempt to defraud. The decisions cited by the counsel for the appellant, i.e. **S. Harnam Singh** v. **The State (Delhi Admn), 1976 S.C.C.(Cri) 324; Anil Kumar Bose** v. **Sate of Bihar, 1974 S.C.C.(Cri)652**; **Jagat Narayan Jha** v. **Sate of Bihar, 1995 S.C.C.(Cri)246**; **C. Chenga Reddy And Others** v. **State of A.P., 1996 S.C.C.(Cri) 1205** and **Himadri Adhikari** v. **The State, 1986 Crl.L.J.337** are not applicable to the facts of the instant case. I find that no interference is called for in the finding of the Special Judge that the appellant is guilty of the offences alleged. The conviction is confirmed.

13. Counsel for the appellant has pleaded for leniency pointing out that more than 18 years have elapsed since the commencement

of the proceedings and that the appellant is aged more than 60 years and that her husband expired recently. In the circumstances, I find that the sentence is liable to be modified. Hence, the sentence imposed for the offences under Sections 5(1)(c) read with Section 5(2) of the P.C. Act 1947 and under Section 13(1)(c) read with Section 13 (2) of the P.C. Act 1988 is modified and the accused is sentenced to undergo imprisonment till the rising of the court and to pay a fine of Rs.50,000/-(Rupees fifty thousand only) and in default to undergo simple imprisonment for one year. No separate sentence is awarded for the rest of the offences. The appeal is disposed of accordingly.

Sd/-

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.A. NO. 168 OF 2000

JUDGMENT

8-10-2007